

CHAPTER 9
RESOURCE MATERIALS



Practicing the CASA/GAL Volunteer Role— Reporting & Monitoring

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Appearing in Court

As a CASA/GAL volunteer, you may be asked to appear in court as part of your work on a case. However, some jurisdictions do not require volunteers to appear in court. Ask the facilitator what the procedure is in your area and what support you will receive to prepare to appear in court. The following information is a brief overview of what you might expect of a courtroom experience. Again, rules and procedures vary by jurisdiction.

Some of the words related to court processes may be unfamiliar to you. The glossary at the end of the Volunteer Manual contains definitions of many of the terms used in this section.

It's Monday morning. You have spent the last few months investigating your case, talking to your child's caseworker, her teachers, and her health care providers, visiting with her and her foster family, and interviewing her parents. You have worked very hard the last two weeks preparing your court report. Now it's time to go to court.

If just the thought of going into a courtroom has your palms sweating and your heart racing, then take a few deep breaths and sit back. Here is what you need to know about surviving in the courtroom.

PREPARATION: GETTING READY FOR COURT

Once you have completed your investigation, prepared your court report, and talked to your attorney (if you have one), your case is ready for court. Now you need to get yourself ready for court. This means being well informed and forewarned about the court process, which the following material is intended to do.

Appearance—“What Do I Wear?”

This is probably not your most serious concern, but since the judge's first impression of you will be based on your appearance, it deserves discussion. Impressions given to the judge are crucial so you should dress professionally and conservatively. Business suits or jackets and ties for men and business

suits, dresses, skirts or slacks and blouses for women are appropriate.

Demeanor—“How Should I Act?”

Your demeanor in court is also important. One word sums it up: **respect**. Any time you are in the courtroom—even when your case is not being heard—conduct yourself in a respectful, professional manner. A helpful rule: If you would not do it in your place of worship or in front of your mother, do not do it in court. Some particular warnings:

- Do *not* bring food or drinks into the courtroom.
- Do *not* chew gum or have anything in your mouth that will need to be spit out.
- Do *not* smoke in the courthouse.
- Turn *off* your cellular phone while you are in the courtroom.
- Turn *off* your pager while you are in the courtroom (unless it is a silent pager).
- Turn *off* your watch alarm.

Show respect for everyone in the courtroom. This rule applies regardless of whether you disagree with them, do not personally care for them, or actually dislike them. Finally, be especially respectful of the judge and mind the bailiff, who will tell you when to sit, when to stand, and when to be quiet.

THE COURT PROCESS

The Calendar—Your Case Is Not the Only Matter Scheduled for the Day

In many jurisdictions, court starts with the judge setting the calendar. The judge will usually begin by “calling the calendar.” This means that the judge will read the name of each case on the calendar. After the judge reads a case name, the attorneys and any party who is not represented by an attorney will stand up, tell the court the status of the case, and estimate



how long the matter will take. Once the judge finishes calling the calendar, he will determine the order of the cases. This is known as “setting the calendar.”

Sometimes there are more cases scheduled for the day than can be heard. The judge may be able to make this determination during calendar call and will announce, at that time, what cases will be continued. Sometimes, however, attorneys underestimate how long a case will take and the judge cannot determine until later in the day that a case will be continued. What does this mean? Well, it may mean that you have sat in court all day and your case was not heard. Frustrating? Yes. Avoidable? To some extent, but remember, the judicial process is not an exact science. Be patient, but by all means let your attorney know in advance if you have other commitments for that day. If your case is continued, it will be scheduled for hearing at another time.

THE HEARING—“The Judge Just Called My Case! What Happens Now?”

“Where Do I Sit?”

If possible, the CASA/GAL volunteer sits in a place in the courtroom that helps demonstrate their objectivity. Your local program will describe the customary seating arrangement in your courtroom.

“Where Is the Jury?”

In juvenile proceedings, there is generally no jury (except in some contested termination of parental rights hearings in some court jurisdictions). In the vast majority of CASA/GAL volunteer cases, the judge will make the final decision regarding the case. In some jurisdictions, a case is “conferenced” by the parties before the scheduled hearing, an agreement reached, and a consent order presented to the judge.

THE HEARING BEGINS

Telling the Truth

The attorney who scheduled the hearing¹ briefly tells the court about the case and why there is a hearing² scheduled. The attorney will then call his/her first witness to the stand. Before taking the stand, the witness will be sworn in. As a witness, you have the option of swearing on the Bible to tell the truth or affirming that the testimony you are about to give will be the truth. If you prefer to affirm your testimony, simply inform your attorney prior to the hearing. Also note that it is not uncommon for all witnesses—regardless of when they will be called to

testify during the proceedings—to be sworn in before any witness is called to the stand.

In less formal settings—such as a dispositional hearing or a review hearing—some judges do not require that witnesses be sworn in or that they take the stand. In this case, the witness remains seated next to his/her attorney to testify or share his/her recommendations.

TELLING YOUR STORY

Direct Examination

A witness may be questioned in several stages. First, the attorney who called the witness to the stand will question the witness on direct examination. This type of questioning is generally open-ended, allowing the witness to fully explain his/her answers. The purpose of direct examination is to present the judge with evidence to support the position of the attorney who called the witness to the stand. For this reason, it is possible that someone other than the attorney for the program will call you as a witness. Do not be alarmed or suspicious if this happens, but heed the warnings outlined in the section below on cross-examination. A helpful rule is to answer only what is asked.

The child’s attorney or the attorney for the CASA/GAL program, if one is appointed, is usually the one who will call you to the stand. If you do not have an attorney, the attorney for the party most closely aligned with your position will call you as a witness. When this is the case, you will know the questions that he/she intends to ask. Do not, however, think that you can script your testimony. The unexpected—such as objections or questions from the judge—can, does, and in all probability will occur. If you have concerns about any particular area of your testimony, review it with the attorney prior to the hearing.

Cross-Examination (Don’t Take It Personally)

Once a witness has been questioned on direct examination by the attorney who called the witness to testify, then all the other attorneys and unrepresented parties have the opportunity to question the witness. This is called cross-examination. Cross-examination involves closed questions and is usually conducted by using leading questions. Where direct examination is used to elicit testimony supporting one’s position, the primary purpose of cross-examination is to expose any weaknesses in the witness’s testimony or to make the witness appear less credible to the judge. Cross-examination is also an opportunity for an attorney



to elicit positive information about the attorney's client that probably did not come out on direct examination.

Because the purpose of cross-examination is to discredit the witness's testimony, the attorney may try to cast doubt upon the thoroughness of your investigation, your interpretation of the facts, and perhaps whether your judgment and actions were clouded by your feelings about the parents. Be prepared for this and discuss with your attorney any concerns you may have about any statements you may have made or action taken that might subject you to attack on cross-examination.

Although you may feel that the person who is cross-examining you is personally attacking you, it is very important that you do not take the questions personally. If you view cross-examination as a personal attack, you will appear defensive and unprofessional—an impression to be avoided at all costs. Remember that the attorney is merely doing what he/she believes needs to be done to represent the client.

Being cross-examined is perhaps the most difficult part of appearing in court. This is due in part to the fact that you do not know what you will be asked, and with each question, you may—at least subconsciously—wonder what the cross-examiner's agenda is. Do not try to figure out an attorney's motive for asking a question. If you heed the warnings and advice given below, you will survive the examination with flying colors!

Be wary of these cross-examination styles and tactics:

1. **Rapid-Fire Questions:** This is where the attorney asks a string of leading questions in rapid succession, giving the witness little time to answer. This tactic is designed to confuse or upset the witness or to force inconsistent answers. Your response: Take control. Always remember that you can slow the pace down, you can take control. Take time to consider the question and be deliberate in answering. Some techniques to consider: ask to have the question repeated or pause before answering each question (in fact, it is always a good idea to take a second or two to think about the question before responding).
2. **Compound Questions:** Sometimes a witness will be asked a question that really contains more than one question. For example, "Isn't it true that you never talked to the mother and that she tried to schedule an appointment with you?" This

tactic is designed to confuse the witness or to force inconsistent answers. When a compound question is asked, your attorney should object. If not, you should tell the judge that the question requires a two-part answer and proceed to answer each question. "I never talked with the mother because she never returned my phone calls and I am not aware that the mother ever tried to schedule an appointment with me."

3. **Lulling the Witness:** In this scenario, the attorney lulls the witness into a false sense of security by being overly friendly and familiar. Your response: Stay alert. Remember, when you are being cross-examined, the purpose is to discredit or diminish the effect of your testimony.
4. **Condescending Counsel:** This tactic is where the attorney is very benevolent to you and oversympathetic to the point of ridicule. Basically it is a condescending attitude. It is used to give the impression that you are inept, lack confidence, or may not be a reliable witness. Your response: Stay calm. Do not let any anger or frustration show. Defeat this tactic by being firm and decisive with your response.
5. **Staring at the Witness:** Sometimes during cross-examination, an attorney will pause after a witness has answered a question and stare at the witness, as if expecting the witness to say more. Your response: Do not speak until the attorney asks you another question. Stay calm. Stay focused.
6. **Badgering the Witness:** This is just what it sounds like. In this scenario, the attorney gets in your face (not literally), shouts, and/or demeans you. Quite often, this tactic is used in conjunction with rapid-fire questions. This technique is used to make the witness become angry and defensive and to lose control. Your response: Stay calm. Speak in a deliberate voice, as unemotionally as possible. Your attorney will object as soon as this style of questioning is apparent.
7. **Demanding a "Yes" or "No" Response to a Question:** Attorneys are taught to ask questions that call for a "yes/no" response on cross-examination. That is the only response the attorney wants. The attorney does not want you to explain to the court all the details surrounding the issue in question. Your response: When a "yes/no" response will either confuse the court or leave out important details, fully answer the question. If



the attorney asks the court to order you to answer “yes” or “no,” do not fret. Your attorney will have an opportunity on redirect examination to elicit a full explanation from you about the matter.

Redirect or Rebuttal Examination

Once all the attorneys have completed their cross-examination of a witness, the attorney who called the witness to the stand has an opportunity to ask more questions of the witness. This is called redirect or rebuttal. If there were new issues raised on cross-examination, redirect examination gives the witness a chance to clear up any confusion and to more fully explain the issues.

Recross-Examination

Following a redirect examination, any issue raised on redirect may be addressed by more cross-examination of the witness. Again, all of the attorneys who did not call the witness to the stand have an opportunity to again cross-examine the witness. This is called recross-examination.

Questions from the Judge

The judge is permitted to ask questions of a witness at any phase of the examination. The judge may ask a question in the middle of an examination or following any phase of the examination. If the judge asks a question, look him/her in the eye and respond with respect, even if the information is negative to your position.

OBJECTIONS—“WHAT DID I DO WRONG?”

During an examination of a witness—be it direct, cross, redirect, or recross—the attorneys who are not questioning the witness may voice an objection to any question asked. Do not be alarmed. This does not mean that you have done anything wrong. It simply means that the attorney is informing the judge that he does not think the question is legally appropriate or proper. If this happens while you are testifying, stop talking and do not answer the question until the judge rules on the objection. If the judge sustains the objection, you should not answer the question at all. Wait for the attorney to ask another question. If the judge overrules the objection, you should then proceed to answer the question.

GENERAL RULES OF TESTIFYING

These rules apply to all phases of your examination, but are especially important during the cross-examination phase.

- **Listen very carefully to the question.**
- **Understand the question.**
Always make sure you understand the question before you attempt to answer it. If you did not hear the question, ask the attorney to repeat the question. If the question is not clear, tell the attorney that you do not understand the question and ask him/her to clarify the question or rephrase it.
- **Answer only the question asked.**
Do not volunteer additional information or discuss tangential matters unless the question calls for a “yes/no” response and such a response would mislead the court. This is especially important on cross-examination. For example, if the question is “Do you know John Doe?” limit your answer to “yes,” “no,” or “I don’t know.” Let the attorney ask any follow-up questions, such as “How do you know John Doe?” One important exception to this rule: if you feel that your answer needs to be explained, do not answer “yes” or “no.” Proceed to give a full response or consider beginning your response by saying, “That question cannot be answered with a ‘yes’ or a ‘no,’” or “The response to that question requires an explanation.”
- **Do not guess when answering a question.**
If you do not know the answer to a question, do not be afraid to say to the court, “I don’t recall” or “I don’t know.” Do not attempt to guess at the answer or say, “I think so.” It is better to say that you do not know something than to risk discrediting yourself by guessing.
- **Do not give an opinion unless it is requested.**
For example, if you are asked, “Where does Johnny want to be placed?” your answer would vary depending on whether you have the information. If you do not know, do not say, “I think he would like to be . . .” However, if you are asked, “Where do you think Johnny should be placed?” then you are being asked for your opinion and can answer, “I believe that Johnny should be placed . . .”



- **Make sure your testimony is heard.**
Try to speak a little louder, slower, and more distinctly than you would usually speak. Avoid nodding or shaking your head in response to a question; the answer to each question must be spoken aloud. Also, avoid the use of “uh-huh” when you mean to answer “yes” or “no.”

MISCELLANEOUS

Other Court Proceedings— “I’ve Just Received a Subpoena!”

In addition to the juvenile proceeding for which you were appointed, it is not uncommon for there to be other court proceedings involving the same facts and circumstances that brought the child you represent into care. For example, there may be criminal charges of child abuse against one or both of the parents of the child you represent. There may also be court proceedings unrelated to the facts and circumstances that brought the child into care, but which are related to the child, such as a domestic dispute between the child’s mom and dad. When this happens, an attorney involved in these other court proceedings may subpoena you for trial or deposition because he/she believes that you may have information that would be important to his client’s case.

The most important consideration regarding your testimony in other proceedings is **confidentiality**. By law, CASA/GAL volunteers must keep all information regarding the case confidential, and no disclosure may be made except by court order or unless provided by law. So what do you do if you receive a subpoena?

1. Inform your case supervisor and attorney (if you have one) that you have received a subpoena.
2. Respond to the subpoena by showing up at the designated time and place.
3. Proceed with caution when called to testify. Your obligation of confidentiality extends to information about a specific case. If you are asked a question unrelated to a specific case—for example, a question about you and your background or a general question relating to work as a CASA/GAL volunteer—you may answer the question. If you are asked a question about a specific case—even an innocent question like “Are you the CASA/GAL volunteer for Johnny Doe?”—you should **not** answer the question. In response to these types of questions, you should inform the judge that you are not at liberty to discuss any

information about a specific case. You might use the following language:

“I respectfully decline to answer the question since I am not at liberty to discuss any information about a specific case.”

Once you have informed the court of your obligation of confidentiality, the judge may order you to testify, in which case you may—in fact must—do so because you now have the judge directing you to answer the question. If in doubt about whether to respond to a particular question, assert your duty of confidentiality and let the judge direct you to answer (or not). To the extent that you are permitted to testify in other court proceedings, the general rules for testifying are the same as when testifying in a juvenile proceeding.

- 1 This is usually the attorney for Child Protective Services or the state, but it could be the attorney for the child, the attorney for the CASA/GAL program, or an attorney for one of the parents.
- 2 A case can be scheduled for hearing for many reasons. In a juvenile case, the routine hearings are emergency custody hearings, adjudication and disposition hearings, review hearings, permanency planning hearings, hearings on termination of parental rights petitions, and post-TPR review hearings.

Material created by Debra Sasser, Associate Counsel,
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